IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8237 of 2007
Date of Decision: 28.5.2007

The Managing Director, Himachal Road Transport Corporation, Shimla

Petitioner

versus

The Appellate Authority and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Neeraj Khanna, Advocate for the petitioner

Jasbir Singh, J. (Oral)

This writ petition has been filed against the award dated 22.12.2005 (Annexure P/1), vide which respondent No.3 was held entitled to Rs.24,729/- towards balance gratuity amount due to him. Further prayer is to quash order dated 25.7.2006 Annexure P/2, vide which, appeal filed by the petitioner against order Annexure P/1 was dismissed.

It is apparent from the records that respondent No.3 had retired from service of the petitioner. He filed an application to claim deficient amount of gratuity, which was not paid despite requests made in that regard. The competent authority, while granting relief to respondent No.3, in order Annexure P/1 has opined as under:-

> *"The AR of non-applicant stated that the applicant is not covered under PG Act, 1972. Since CCS Rules are applicable to the HRTC. The AR of the applicant vehemently denied and argued that in view of the decision of the Hon'ble Supreme Court in Municipal Corporation of Delhi v/s Dharam Parkash Sharma and another (1998-II-LLJ-625), it has been held that*

Payment of Pension and Gratuity under Pension Rules, 1972 would not disentitle the applicant to the gratuity payable under the Payment of Gratuity Act, 1972. The Payment of Gratuity Act was enacted in 1972. In absence of appropriate Govt. Granting exemption under Section 14 of PG Act to establishment from operation of provisions its employees would be entitled to payment of gratuity under Act not withstanding application of pension rule to them. In view of the above facts the issues decided in favour of applicant. The PG Act is very much applicable and applicant is entitled to claim the benefits as per PG Act, 1972. This is more favourable to the applicant and option of CCS Rules is not a bar for claiming the benefits which are more beneficial to the employee.

In light of the above I determine the gratuity as below:-

Length of service 19.4.75 to 30.9.2000

Last Wages Drawn Total Rs.8460/-(Rs.6000/- Basic Pay+ 2460 D.A.)

Amount Gratuity Payable Rs. $\frac{8460 \times 15 \times 25}{26}$ *= Rs.122019/-*

Gratuity already paid Rs.97,290/-

Balance amount of Gratuity payable Rs.122019 – 97290/- = Rs.24729/-

The Section &7(3) and 7(3-A) of Payment of Gratuity Act, 1972 read as below:-

(3) The employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) if the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-

section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for re-payment of long term deposits, as that Government may, by notification specify.

Keeping in view of the above statutory provision for payment of interest the applicant is also entitled for payment of 10% interest on Rs.24729/- (Rs.Twenty four thousand seven hundred twenty nine only) from the date of retirement till the date of payment."

The petitioner failed in appeal. We feel that the order passed is perfectly justified. The competent authority has given a specific finding that as per provisions of the Payment of Gratuity Act, 1972, respondent No.3 was entitled to claim an amount of Rs.24,729/-, which was paid less by the petitioner – management. In view of delayed payment, grant of interest is also justified. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

May 28, 2007 **(Nirmal Yadav)**
gk **Judge**